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Decision

Matter of: Joppa Maintenance Company, Inc.

File: B-281579; B-281579.2

Date: March 2, 1999

Kenneth Bruntel, Esq., Crowell & Moring LLP, for the protester.
Frank K. Peterson, Esq. and Frank K. Peterson, Holland & Knight LLP, an intervenor.
Vickie O. O'Keefe, Esq., Naval Facilities Engineering Command, for the agency.
John L. Formica, Esq., and James Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the awardee's prices were unbalanced is denied where the record shows that the differences between the awardee's and protester's prices were not significant, and neither offeror's prices appear significantly understated or overstated.
2. Protest that the contracting agency improperly evaluated the protester's and awardee's technical proposals submitted in response to a solicitation for grounds maintenance services is denied where the record shows that the evaluation was reasonable in that the evaluators recognized the protester's proposal's technical superiority.
3. Protest of the agency's determination that the technical superiority of the protester's proposal was outweighed by the price advantage of the awardee's is denied where the record shows that the trade-off decision was reasonably based.

DECISION

Joppa Maintenance Company, Inc. protests the award of a contract to D.M. Potts Corporation under request for proposals (RFP) No. N68950-97-R-0094, issued by the Department of the Navy for grounds maintenance services at the Great Lakes Naval Training Center.

We deny the protest.

The RFP provided for the award of a fixed price, indefinite-quantity contract for a base period of 1 year with four 1-year options. The contractor will be required to furnish all management, supervision, personnel, transportation, equipment, labor, tools, supplies, and quality control to perform ground maintenance services at the training center. RFP amend. 1, § C.1. The solicitation stated that award would be made to the offeror whose proposal represented the best value to the government, with technical merit and price being equal in importance. RFP § M.1. With regard to technical merit, the RFP listed three equally important evaluation factors: (1) methods, procedures, and resources; (2) relevant experience; and (3) past performance. Id. at § M.2.A.

The RFP provided detailed instructions for the preparation of proposals and included, among other things, a price schedule for offerors to complete. This schedule contained a definite-quantity section (referred to in the record as the "fixed-price work") and an "indefinite quantity work" section for each contract year. RFP § B. In essence, the successful contractor will be required to perform the grounds maintenance work listed in the definite-quantity section of the schedule (e.g., herbicide treatment and weed control), with the work in the indefinite-quantity section (e.g., stump removal) being performed only if ordered by the agency.

The agency received proposals from Joppa (the incumbent contractor), Potts, and another offeror by the RFP's closing date. The proposals were evaluated, and the proposal of the third offeror was eliminated from the competitive range. Written questions were provided to Joppa and Potts, and best and final offers (BAFO) were requested and received by the agency. Joppa's BAFO was rated as acceptable under the methods, procedures, and resources evaluation factor, highly satisfactory under the relevant experience and past performance factors, and highly satisfactory overall, with a total price for the definite-quantity and indefinite-quantity work for the base plus option years of \$6,654,316.¹ Agency Report, Tab 11, Supplemental Price Evaluation Board Report, Oct. 26, 1998; Tab 13A, Technical Evaluation Team Report, Oct. 26, 1998. Potts's BAFO was rated as acceptable under each of the evaluation factors, and acceptable overall, with a total price for the definite-quantity and indefinite-quantity work for the base plus option years of \$6,253,995. Id. The source selection board (SSB) determined that Joppa's proposal's higher technical rating did not offset its 6-percent price disadvantage, and concluded that Potts's proposal represented the best value to the government. Agency Report, Tab 16A, SSB Report. The agency awarded the contract to Potts and, after requesting and receiving a debriefing, Joppa filed this protest.

¹ The source selection plan provided for technical ratings of highly satisfactory, acceptable, unacceptable but susceptible to being made acceptable, and unacceptable. Agency Report, Tab 7, Informal Source Selection Plan at 6-9.

Joppa first argues that Potts's proposal should have been rejected by the agency as technically unacceptable. In this regard, the protester points out, for example, that the methods, procedures, and resources evaluation factor stated, among other things:

The amount, type and condition of equipment is extremely critical to the success of accomplishment of the contract requirements. The proposed types and amounts of equipment, along with the equipment maintenance plan, should be clearly shown.

RFP § M.3.A.(1). Joppa argues that Potts's technical proposal failed to provide all of the desired information, and because of this the agency was required not just to downgrade Potts's proposal as it did, but to reject it.

As a general rule, a proposal need not show compliance with each aspect of a solicitation where the solicitation does not require such a showing. Mine Safety Appliances Co.; Interspiro, Inc., B-247919.5, B-247919.6, Sept. 3, 1992, 92-2 CPD ¶ 150 at 3, recon. denied, National Draeger, Inc--Recon., B-247919.7, Nov. 6, 1992, 92-2 CPD ¶ 325. Here, contrary to the protester's views, the language quoted above, as well as the other sections of the RFP to which the protester refers, simply do not set forth minimum standards such that an offeror's failure to provide the requested information requires the rejection of the proposal. Rather, section M of the RFP sets forth the evaluation factors and their relative weights, and details under each evaluation factor the information that should be included in the section of the offeror's proposal addressing that factor. Minimum objective standards (such as minimum acceptable experience levels for personnel) were not necessary, as the agency determined that the best evaluation method was to comparatively evaluate proposals.² See W.B. Jolley, B-234490, May 26, 1989, 89-1 CPD ¶ 512 at 3-4.

Joppa next argues that the agency's evaluation of proposals under the methods, procedures, and resources evaluation factor was unreasonable. Specifically, Joppa refers to the evaluation record, and complains that in spite of the weaknesses noted

² The protester also argues that Potts's proposal should have been rejected as unacceptable because it failed to include a quality control plan or a safety plan. The protester's arguments are without merit. With regard to the requirement for a quality control plan, the RFP specifically references such a plan in section C-22, and requires its submission not with the offeror's proposal, but rather "15 calendar days after award of the contract." RFP amend. 1, § C.22.1. Further, while the RFP's statement of work sets forth certain safety requirements, it does not require or even request the submission of a safety plan with an offeror's proposal. Id. at § C.11. Accordingly, Potts's proposal's lack of a quality control or safety plan provides no basis for the proposal's rejection.

by the agency "there is no indication in the record that the Navy ever penalized D.M. Potts for its failures in this regard." Supplemental Protest, Jan. 4, 1999, at 5.

The evaluation of proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. In reviewing an agency's evaluation, we will not reevaluate proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria. MAR Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367 at 4. An offeror's mere disagreement with an agency's evaluation does not render the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

The evaluation record reflects that the agency noted both strengths and weaknesses in Potts's proposal and, as stated previously, rated the proposal as acceptable under each of the evaluation factors and acceptable overall. The rating of Potts's proposal as acceptable, rather than as highly satisfactory, in and of itself demonstrates that the proposal was in fact "penalized" for the weaknesses noted by the agency. Based upon our review of the record, we have no basis on which to determine that the agency's evaluation of technical proposals was unreasonable.

The protester argues that the agency's evaluation of price proposals was unreasonable. Joppa points out that when the offerors' price proposals are analyzed, its total price of [DELETED] for the definite-quantity work is actually less than Potts's total price of [DELETED] for this work (a difference of approximately [DELETED] percent), and that Potts's total overall price advantage of 6 percent is due to its lower price for the indefinite-quantity work. Potts's price-per-year for the indefinite-quantity work was [DELETED], whereas Joppa's price-per-year for the indefinite-quantity work was [DELETED] (a difference of [DELETED] percent). Joppa concludes that because it proposed the indefinite-quantity work "[DELETED], D.M. Potts must have proposed significantly below cost for this effort." Protest, Nov. 23, 1998, at 7. Joppa adds that because Potts's overall price for the definite-quantity work is more than Joppa's, Potts's price for the definite-quantity work must be enhanced, and Potts's overall pricing is thus unbalanced. Joppa also contends that the agency failed to perform a proper price reasonableness analysis in evaluating Potts's proposal, based on the protester's view that Potts's prices were not in line with Joppa's "[DELETED]" prices.

Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated. Federal Acquisition Regulation (FAR) § 15.404-1(g) (FAC 97-02). Offers with separately priced line items must be analyzed to determine if the prices are unbalanced. Id.

The agency responds that in its view Potts's prices were not unbalanced. The agency explains that the difference in pricing between Joppa and Potts was not significant, and can be explained by, for example, differing "relationships with suppliers, or other cost savings measures." Agency Report at 6.

Although Joppa contends that Potts's price for the definite-quantity work of [DELETED] per year is inflated, Potts's price is actually [DELETED] than Joppa's price of [DELETED] for the definite-quantity work in the contract's base year, and Potts's total (base plus option years) price for the definite-quantity work is only [DELETED] than Joppa's.³ Potts's prices for the indefinite-quantity work, as indicated above, are [DELETED] than Joppa's. These price differences between the proposals simply do not require that the agency find that Potts's proposal was unbalanced. Ranco Constr., Inc., B-281242, Jan. 12, 1999, 99-1 CPD ¶ 19 at 3.

We also cannot find that the agency failed to perform an adequate price reasonableness analysis of Potts's proposal. The record reflects that the cognizant price evaluation board (PEB) reviewed the offerors' proposals on a number of occasions, and furnished several written reports setting forth their views. Agency Report, Tab 10, PEB Report, Apr. 30, 1998; Agency Report, Tab 13, PEB Report, July 13, 1998; Agency Report, Tab 12, PEB Report, Nov. 2, 1998. These detailed reports include comparisons of Joppa's and Potts's proposed prices on a contract line item (CLIN) by CLIN basis, a year-to-year basis, and a total price basis, for both the definite-quantity and the indefinite-quantity work, and conclude with regard to Potts's proposal that although the firm's proposed price is lower than the agency's historical contract costs, the prices are reasonable. As mentioned previously, we do not agree with the protester that the prices proposed by Potts and Joppa differ to such an extent as to indicate that Potts's price proposal was unbalanced, or that the agency's analysis of the price proposals was inadequate or its conclusions unreasonable.

Joppa further argues here that the agency's evaluation was flawed because the estimates set forth in the indefinite-quantity work section of the RFP's price schedule were inaccurate. Joppa's argument regarding the accuracy of the estimates stems from a comment made by an agency employee during Joppa's debriefing that the indefinite-quantity work estimates "were a 'wish list,' subject to customer funding." See Agency Report, Tab 8, Affidavit of the Contract Specialist.

³ Potts's prices of [DELETED] and [DELETED] for the definite-quantity and indefinite-quantity work, respectively, remained constant for each year of the contract. In contrast, while Joppa's price for the indefinite-quantity work of [DELETED] remained constant for each year of the contract, its prices for the definite-quantity work [DELETED]. Because of Joppa's pricing scheme for the definite-quantity work, if only the prices for such work are considered Joppa's offer would not [DELETED].

The record demonstrates that Joppa, the incumbent contractor, was aware of its basis of protest regarding the accuracy of the indefinite-quantity work estimates from the face of the RFP. In this regard, Joppa submitted the following question to the agency by letter dated February 17, 1998:

Indefinite quantity items 2AM-2AR are unrealistic for this size contract. Does the Navy realistically intend to order 30 acres of sodding per year? This will substantially inflate bids for this contract.⁴

Joppa confirms its understanding regarding the accuracy of the indefinite-quantity estimates first reflected in its February 17, 1998 letter by stating in its protest to our Office that "[t]he estimated quantity of IDIQ [indefinite-delivery, indefinite-quantity] work under this solicitation far exceeds the quantity of IDIQ work under prior contracts." Protest, Nov. 23, 1998, at 3. Accordingly, because Joppa's protest concerning the accuracy of the estimates was not filed prior to the closing time for receipt of initial proposals, this aspect of its protest is untimely and will not be considered. 4 C.F.R. § 21.2(a)(1) (1998).

We note here that the fact that the agency responded to Joppa's February 17 question regarding the accuracy of the estimates by stating in amendment No. 0002 to the RFP (issued on February 20, 1998) that "[t]he Indefinite Quantities listed are estimated requirements and will be ordered on an as needed basis" has no effect on Joppa's obligation to raise this basis of protest prior to the closing date for receipt of proposals. It is clear from the record, including Joppa's February 17 question to the agency, that Joppa as the incumbent contractor was aware from the face of the solicitation of its basis of protest regarding the accuracy of the estimates, and thus had an affirmative obligation to raise that basis unless the agency took some action that rendered that basis moot—such as amending the RFP.

Additionally, in light of Joppa's understanding regarding the estimates, the timeliness of this basis of protest is not affected by the agency's comment during Joppa's debriefing that the estimates constituted a "wish list."⁵ A protest that could have been filed in a timely manner but was not cannot subsequently be revived as timely by an event—such as the "wish list" comment here—that may only serve to confirm the

⁴ The indefinite-quantity section of the price schedule listed items AA through AU. Joppa's argument regarding the accuracy of the estimates for the indefinite-quantity work is primarily based upon certain CLINs within CLINs AM through AR.

⁵ The agency has furnished documentation to demonstrate the accuracy of the indefinite-quantity estimates, and explains that the "wish list" reference was only meant to clarify that its desire or intent to "purchase additional services during contract performance is always subject to fiscal constraints." Agency Report at 3.

untimely basis of protest. See EG&G Flow Tech., B-251785, Apr. 16, 1993, 93-1 CPD ¶ 326 at 3-4.

Joppa argues that the award decision was flawed because the agency did not adequately account for Joppa's evaluated technical superiority, and that contrary to the terms of the RFP, price became the deciding factor in the award selection.

Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost/price evaluation results; tradeoffs may be made, and the extent that technical superiority may be sacrificed for a cost/price advantage is governed by the test of rationality and consistency with the established evaluation factors. Southern Research, B-266360, Feb. 12, 1996, 96-1 CPD ¶ 65 at 3; Dayton T. Brown, Inc., B-229664, Mar. 30, 1988, 88-1 CPD ¶ 321 at 4-5. Even where the source selection authority did not specifically discuss the tradeoff, we will not object to the tradeoff if it is clearly supported by the record. Southern Research, *supra*; Maytag Aircraft Corp., B-237068.3, Apr. 26, 1990, 90-1 CPD ¶ 430 at 4.

Consistent with the determinations of the evaluators, the SSB found that Potts's proposal's rating of acceptable under the relevant experience and past performance factors "was based in large part on its lack of previous experience and references." Agency Report, Tab 16A, SSB Report. The board noted, however, that although Potts lacked the depth of experience of Joppa (as evidenced by Joppa's proposal's higher rating under these factors), the reference noted by Potts for a contract similar in size and scope to that provided for by this RFP rated Potts's performance as "excellent," *id.*; see Agency Report, Tab 12, PEB Memorandum, Nov. 2, 1998, and that the PEB had determined that Potts's offer "was deemed to bear a minimal cost risk." Agency Report, Tab 16A, SSB Report. The SSB recognized that Joppa's technical proposal had a higher rating than Potts's, but determined that Joppa's proposal's "higher cost was not offset by a significant higher rating of technical factors to support an award at this premium cost." *Id.* In sum, the record reflects that the board's determination was based upon its weighing of the technical superiority of Joppa's proposal against the 6-percent price advantage presented by Potts's proposal, and that the board determined that Potts's proposal represented the better value to the government. Despite the protester's disagreement with the board's decision, we cannot find the selection decision unreasonable.

The protest is denied.

Comptroller General
of the United States